



March 3, 2000

Mr. Donald R. Postell
City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2000-0870

Dear Mr. Postell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132693.

The City of Grand Prairie (the "city") received a request in the form of six questions regarding a sewer backup at 814 NW 9th Street. The city received the following questions:

1. Was the city working on the line when the damage occurred, or did the city respond to a call about a backed up sewer?
2. What equipment was used to clear the line?
3. How many backups have occurred on this line in the previous year?
4. Was the sewage forced into the home by the activities of the city?
5. Were any street repairs in progress within approximately 1000 yards of our insured's residence on the date of loss?
6. Who called in the request for service to the city?

You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), amended by the Seventy-sixth Legislature, reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You submitted to this office a letter from an insurance company, which was received by the city on the same day as the request for information, alleging that the city may be responsible for damages to the residence at 814 NW 9th Street as a result of a sewer backup that occurred on August 4, 1999. According to the letter, the insurance company paid a claim of

¹The Public Information Act does not require governmental bodies to provide answers to general inquiries. Open Records Decision Nos. 555 (1990), 342 (1982). It simply requires, with certain exceptions, that governmental bodies make available information they collect, assemble, or maintain. The city correctly asserts that the questions resemble interrogatories and request for admissions. Although the city has not answered the questions, the city has submitted information related to the sewer backup at 814 NW 9th Street. Therefore, we will address the city's asserted exceptions to disclosure of the submitted information.

\$17,215.36 to its insured and is looking to the city for possible reimbursement of the claim. Further, the insurance company requests that the letter be forwarded to the city's insurance company for discharge of the obligation. Based on the totality of the circumstances, we conclude that the city has made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). Therefore, you may withhold the requested information under section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

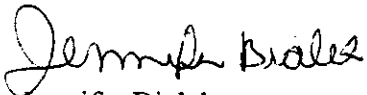
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Bialek". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 132693

Encl. Submitted documents

cc: Mr. Scott Mendenhall
State Farm Insurance
P.O. Box 154409
Irving, Texas 75015
(w/o enclosures)